FILED
APR 25 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1553

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CHURCH OF SCIENTOLOGY FLAG SERVICE ORG., INC.,

Petitioner,

—against—

CITY OF CLEARWATER, THOMAS BUSTIN, City Attorney of the City of Clearwater, and LUCILLE WILLIAMS, City Clerk of the City of Clearwater,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF OF PETITIONER

ERIC M. LIEBERMAN, Esq.
Counsel for Petitioner
RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.
740 Broadway, Fifth Floor
New York, New York 10003-9518
(212) 254-1111

April 1986

TABLE OF CONTENTS

PAGE

Table of Authorities ii

Introduction 1

ARGUMENT 2

I. The Cases Cited by Respondents Have No Bearing on Whether Petitioner Has Established Facts Sufficient to Confer Standing on It to Bring a Facial Challenge to Clearwater Ordinance No. 3479-84 2

II. The Clearwater Ordinance Is Unique Among Charitable Solicitation Ordinances and Contravenes Over a Century of Constitutional Law 4

CONCLUSION 10

Table of Authorities

Cases: PAGE

Bender, et al. v. Williamsport Area School District, et al., —— U.S. ——, 54 L.W. 4307 (March 25, 1986) 3

Bob Jones University v. United States, 461 U.S. 574 (1983) 8

Branzburg v. Hayes, 408 U.S. 665 (1972) 9

Davis v. Beason, 133 U.S. 333 (1890) 7

Gibson v. Florida Legislative Comm., 372 U.S. 539 (1963) 9

Grosz v. City of Miami Beach, 721 F.2d 729 (11th Cir. 1983), *cert. denied* 105 S.Ct. 108 (1984) 8

Harden v. State, 216 S.W.2d 708 (Tenn. 1984) 8

International Society for Krishna Consciousness v. City of Houston, 689 F.2d 541 (5th Cir. 1982) 6

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952) 7

Lakewood, Ohio Corp. of Jehovah's Witnesses, Inc. v. City of Lakewood, 699 F.2d 303 (6th Cir. 1983), *cert. denied* 104 S.Ct. 72 (1983) 8

People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903) 8

Prince v. Massachusetts, 321 U.S. 158 (1948) 8

Reynolds v. United States, 98 U.S. 145 (1878) 7

Secretary of the State of Maryland v. J.H. Munson Co., 467 U.S. 947 (1984) 6

United States v. Kissinger, 250 F.2d 940 (3rd Cir. 1958), *cert. denied* 356 U.S. 956 (1958) 7

United States v. Lee, 455 U.S. 252 (1982) 8

United States v. Moon, 718 F.2d 1210 (2nd Cir. 1983), *cert. denied* 104 S.Ct. 2344 (1984) 8

PAGE

Village of Schaumburg v. *Citizens for a Better Environment*, 444 U.S. 620 (1980) 5

Watson v. *Jones*, 13 Wall (80 U.S.) 666 (1872) 7

Codes, Statutes and Ordinances:

26 U.S.C. § 6033(a)(2) 5

26 U.S.C. § 7611 5

Alexandria City Code Sec. 9-10-1 5

Ark. Stat. Ann. § 64-1604 5

Conn. Gen. Stat. Ann. § 21a-178(8), 16 5

Dallas City Code Article 1 § 42-3(c)(1) 5

Ga. Code Ann. § 43-17-18(4) 5

Haw. Rev. Stat. § 467B-1(6) 5

Ill. Ann. Stat. Ch. 23 § 5103(2) 5

Jacksonville, Fla. City Code § 694.101(2) 5

Kan. Stat. § 17-1741(2) 5

Los Angeles City Code § 44.16 5

Me. Rev. Stat. Tit. 9 § 5006(A) 5

Md. Ann. Code Art. 41 § 103(c)(5) 5

Mass. Ann. Laws, Ch. 68 § 20(8) 5

Mich. Comp. Laws Ann. § 400.272(c) 5

Minn. Stat. Ann. § 309.51(b) 5

N.C. Gen. Stat. § 131C-5(a) 5

N.D. Cent. Code § 50-20-01(1) 5

N.J. Stat. Ann. § 45:17 a-5(b)(2) 5

N.Y. Exec. Law § 172-a(2)(b) 5

PAGE

Ohio Rev. Code Ann. § 1716.03(B)(2) 5

Okla. Stat. Ann. Tit. 18 § 552.4(3) 5

Pa. Stat. Ann. Tit. 10 § 160-4(3) 5

R.I. Gen. Laws § 5-53-3(2) 5

Va. Code § 57-60(4) 5

W. Va. Code § 29-19-6(5) 5

No. 85-1553

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CHURCH OF SCIENTOLOGY FLAG SERVICE ORG., INC.,

Petitioner,

—against—

CITY OF CLEARWATER, THOMAS BUSTIN, City Attorney of the City of Clearwater, and LUCILLE WILLIAMS, City Clerk of the City of Clearwater,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF OF PETITIONER

Introduction

Petitioner (hereinafter the "Church") submits this reply brief to correct the numerous misstatements of fact and law in Respondents' Brief in Opposition. Primary among the misstatements of fact relied upon by respondents, is their summary of the alleged misdeeds committed by the Church. See Brief in Opposition at 2-4. First, it should be emphasized that there are no facts or evidence in the record which support any of respondents' outrageous and unfounded allegations. See Brief in Opposition at 2 n.1. Thus, it is entirely inappropriate—indeed, unprofessional—for respondents to make these allegations here in an effort to support their argument that the Clearwater ordinance was enacted to further a legitimate governmental

interest. Moreover, it is no coincidence that these facts are not in th erecord. For it was respondents who insisted to the district court that no evidentiary materials were relevant to the question of the facial validity of the ordinance. Indeed, respondents even went so far as to file a motion *in limine* to prohibit the use of evidentiary materials or the introduction of testimony.

Finally, and most importantly, even if these purported "facts" are accepted, *arguendo*, as true at the present stage of the case, they are irrelevant to a determination of the facial validity of the Clerwater ordinance. As is evident from comparing the alleged purpose of the ordinance to its requirements, there is no rational relationship between the "evils" which respondents claim the ordinance was intended to prevent and the provisions of the ordinance which address only solicitation practices. Thus, these purported facts would in no way justify the City's unconstitutional intrusion into the peaceful relationships between churches and their members.

ARGUMENT

I.

The Cases Cited by Respondents Have No Bearing on Whether Petitioner Has Established Facts Sufficient to Confer Standing on It to Bring a Facial Challenge to Clearwater Ordinance No. 3479-84.

In arguing that the facts which have been pled and proven by the Church to establish its standing to bring a facial challenge to ordinance no. 3479-84 are not sufficient to confer jurisdiction on this Court to adjudicate the weighty and important constitutional claims raised herein, respondents confuse and incorrectly interchange different and distinct principles of Article III jurisdiction which have no relevance to the instant case. Respondents have failed to show that the standing requirements for

facial challenges brought under the First Amendment have not been satisfied here.

None of the cases cited by respondents involve facial challenges brought under the First Amendment. Respondents have not even attempted to address the cases discussed in the Petition (at 9-14) holding that there are relaxed standing requirements for such facial constitutional challenges. The one case cited by respondents which involves standing in the context of a challenge brought under the religion clauses of the First Amendment, *Bender, et al. v. Williamsport Area School District, et al.*, —— U.S. ——, 54 L.W. 4307 (March 25, 1986), involved a claim that the challenged activity was unconstitutional *"as applied"*, not on its face. Thus, this case is similarly inapposite. For in an "as applied" challenge, *unlike a facial challenge*, the particular facts of the activity prohibited and the reasons therefore must be considered in order to resolve the constitutional claims. Indeed, this is what distinguishes an "as applied" challenge from a "facial" challenge.[1]

Thus, as demonstrated in our opening brief, the religious nature of the Church and of its solicitation activities, as well as the particular burden imposed on it as a result of the registration requirement, is simply irrelevant to the question of whether the Church has standing to raise the claims at issue herein.[2]

---

[1] *Bender* is further distinguishable, because there, unlike in the instant action, the plaintiff not only did not allege any facts which conferred standing on him in his complaint, let alone—as here—by affidavit, but did not even assert these facts until oral argument in the Supreme Court. 54 L.W. at 4310. In the present case, the facts giving rise to standing, as asserted in the Church's verified complaint, were properly found to be true by the district court when the City stipulated in open court not to challenge standing.

[2] Respondents' additional argument that this Court should not address the constitutional issues raised herein because petitioner

(footnote continued on following page)

II.

The Clearwater Ordinance Is Unique Among Charitable Solicitation Ordinances and Contravenes Over a Century of Constitutional Law.

Respondents strain to characterize the Clearwater ordinance as one which comports with decisions of this Court, the circuit courts, and which is nearly identical to numerous other solicitation ordinances presently in effect throughout the states and municipalities of this country. In so doing, however, respondents seek to gloss over the fact that the Clearwater ordinance, unlike any other charitable solicitation ordinance, regulates relationships between charitable organizations and their own members. Nowhere else in the United States, either now or, we believe, at any time in its history, has a governmental entity attempted to require a church to seek government approval and meet government imposed registration and disclosure standards before it passes a collection plate among its own parishioners.

It is because of this aspect of the Clearwater ordinance that the ordinance cannot be compared to the other solicitation ordinances enacted by local governments. Indeed, a review of the state and local solicitation ordinances which respondents claim are nearly identical to the Clear-

---

(footnote continued from previous page)

is not immediately threatened with harm due to the fact that there is presently a partial injunction in effect, is both illogical and irrelevant. The fact that the entire ordinance may not be enforced until a decision on the merits of the Church's facial and as applied challenges is issued does not preclude this Court or any other federal court from addressing the merits of the Church's claim. Under the respondents' theory, any time an injunction is issued prior to a final decision on the merits of a litigant's claim the litigant would thereby be precluded from establishing the necessary threatened injury to satisfy the standing requirement, and thus would never be able to obtain a decision on the merits of its claim.

water ordinance graphically illustrates this point. The overwhelming majority of the statutes and ordinances cited by respondents specifically exempt from their coverage solicitation by organizations (both religious and charitable) of their own members.[3] Moreover every statute or ordinance cited by defendants which does not exempt solicitations of members, broadly exempts regulation of religious solicitation altogether.[4] Thus, no governmental entity, other than Clearwater, has asserted an interest in regulating church-member solicitations.[5]

Nor has this Court, or any other court, ever upheld against a constitutional challenge a solicitation ordinance similar to the Clearwater ordinance. Although this Court approved, in *dicta*, of disclosure laws as a means of regulating charitable solicitation in *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620, 637-38

---

[3] *E.g.*, Ark. Stat. Ann. § 64-1604; Conn. Gen. Stat. Ann. § 21a-178(8), 16; Ga. Code Ann. § 43-17-18(4); Haw. Rev. Stat. § 467B-1(6); Ill. Ann. Stat. § 5103(2); Kan. Stat. § 17-1741(2); Me. Rev. Stat. Tit. 9 § 5006(A); Md. Ann. Code Art. 41 § 103(c)(5); Mass. Ann. Laws Ch. 68 § 20(8); Mich. Comp. Laws Ann. § 400.272(c); Minn. Stat. Ann. § 309.51(b); N.J. Stat. Ann. § 45.17A-5(b)(2); N.Y. Exec. Law § 172-a(2)(b); Ohio Rev. Code Ann. § 1716.03(B)(2); Okla. Stat Ann. Tit. 18 § 552.4(3); Pa. Stat. Tit. 10 § 160-4(3) (only short-form required); R.I. Gen. Laws § 5-53-3(2); Va. Code § 57-60(4); W. Va. Code § 29-19-6(5); Alexandria City Code § 9-10-1; Dallas City Code § 42-3(c)(1); Jacksonville City Code § 694.101(2); Los Angeles City Code § 44.16.

[4] N.C. Gen. Stat. § 131C-5(a); N.D. Cent. Code § 50-20-01(1).

[5] The federal tax statute cited by respondents similarly exempts religious organizations from filing and record keeping requirements. 26 U.S.C. § 6033(a)(2) exempts "(1) churches, their integrated auxiliaries, and conventions or associations of churches" and "(iii) the exclusively religious activities of any religious order" from the filing and record-keeping requirements of § 6033(a)(1). In addition, other sections of the Code provide additional protections for religious organizations. Under 26 U.S.C. § 7611, the Secretary's authority to conduct examinations or investigations of taxpayers books is severely restricted if the taxpayer is a religious organization.

(1980) and *Secretary of the State of Maryland* v. *J.H. Munson Co.*, 467 U.S. 947, 104 S. Ct. 2839, 2850 n.9 (1984), neither of these cases support the sort of disclosure law at issue herein. First, neither *Schaumburg* nor *Munson* involved the application of a disclosure law to a religious organization and thus this Court was not confronted with the free exercise and establishment clause problems such laws create. In addition, in neither *Schaumburg* nor *Munson* was there any attempt to regulate solicitations from members or any attempt to compel disclosure of expenditures donated by members. Thus, this Court's approval of disclosure laws was limited to funds solicited from members of the public.

Respondents' reliance on *International Society for Krishna Consciousness* v. *City of Houston*, 689 F.2d 541 (5th Cir. 1982) is similarly misplaced. Not only did the City of Houston specifically exempt from its regulation solicitations by churches of their own members and/or upon their own premises, 689 F.2d at 562, but the court of appeals emphasized this exemption in holding that the ordinance was constitutional:

> There is no disclosure required except as it specifically relates to the raising of funds from the public. No membership lists are required; no names of contributors are sought; no information is asked about funds raised from members; nothing must be revealed regarding proselytizing of new members. Significantly, too, no dilemma is posed to an organization forcing it to decide whether to remain totally private or, by making public solicitations, reval publicly all aspects of its operations. The internal operations of the organization, apart from its public solicitations, remain under the veil of privacy. All that is mandated is disclosure to the public about those funds which are solicited from the public.

689 F.2d at 556.

Indeed, it is not surprising that no other governmental entity or court has ever enacted or approved of a disclosure law similar to the Clearwater ordinance. For well over a century, this Court has held that religious activities within a church are and must be free of government intrusions, except where a member is in danger of his life or serious physical harm, or where the activities of the church substantially collide with liberties or rights of the public. *Watson* v. *Jones*, 13 Wall (80 U.S.) 666 (1872). *See Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952). The activity regulated by the Clearwater ordinance clearly falls within the core of protected activity under the *Watson* rule. By no stretch of the imagination can the passing of the collection plate by a church among its members be deemed to involve either the public or to pose a threat of serious physical harm to a member. The cases relied on by respondents to support such government interference, on the other hand, clearly fall into the exception to the *Watson* rule.

Thus, the polygamy cases concerned not merely the relationship between church members, but the formal request of the church and its members for state license and sanction of the relationship. The state's interest in refusing to license polygamy was upheld because the Court found that the nature of the marital relationship is central to the entire structure of civilized society. *Reynolds* v. *United States*, 98 U.S. 145, 165-166 (1878); *Davis* v. *Beason*, 133 U.S. 333, 344 (1890).

Similarly courts have upheld statutes regulating the marketing of wheat, residential zoning and tax exemptions despite their impact on religious activity because the activity regulated affected the public,[8] or posed a serious

---

[8] *United States* v. *Kissinger*, 250 F.2d 940 (3rd Cir. 1958) *cert. denied*, 356 U.S. 956 (1958) (Agriculture Adjustment Act which limited amount of wheat farmers could market affected market

(footnote continued on following page)

threat of physical harm or death.[7] Thus, none of the cases relied on by respondents establish a right for the government to interfere with the peaceful solicitation of donations by churches of their own members.

The City attempts to justify the ordinance by recitation of a laundry list of purported crimes and "anti-social acts," which, as we have seen, are wholly without support in the

---

(footnote continued from previous page)

price of wheat); *Gross* v. *City of Miami Beach*, 721 F.2d 729 (11th Cir. 1983), *cert. denied* 105 S. Ct. 108 (1984) and *Lakewood, Ohio Corp. of Jehovah's Witnesses, Inc.* v. *City of Lakewood*, 699 F.2d 303 (6th Cir. 1983), *cert. denied*, 104 S. Ct. 72 (1983) (activity regulated involved the congregating of significant numbers of people, destroying the residential nature of the neighborhood and thus directly affecting the public, *Bob Jones University* v. *United States*, 461 U.S. 574 (1983) (denial of tax exempt status to segregated schools upheld to further governmental interest in eradicating racial discrimination in our society); *United States* v. *Lee*, 455 U.S. 252 (1982) (court denied religious exemption for payment of social security tax because such an exemption would undermine entire federal tax system).

Respondents' reliance on *United States* v. *Moon*, 718 F.2d 1210 (2nd Cir. 1983), *cert. denied*, 104 S. Ct. 2344 (1984) is misplaced. Moon was convicted for non-payment of taxes on *personal* income which was not held for religious purposes. Thus, the First Amendment protection for religion was not implicated.

[7] *Harden* v. *State*, 216 S.W. 2d 708 (Tenn. 1984) (court upheld law prohibiting use of poisonous snakes in religious services); *People* v. *Pierson*, 176 N.Y. 201, 68 N.E. 243 (1903) (court upheld conviction of parent for failure to provide medical care for his child, resulting in child's death).

Only where the state has a special responsibility to protect those who cannot protect themselves can the state regulate religious activities which pose a less substantial threat of harm to the member. Thus, in *Prince* v. *Massachusetts*, 321 U.S. 158 (1948), this Court upheld the prohibition of the sale of religious documents by children, under the child labor laws. Although this Court recognized the importance of the state's interest in enforcing the child labor laws to ensure "the healthy, well-rounded growth of its young people," *id.* at 168, this Court noted that without its coordinate *parens patriae* power, an interest of this magnitude would not be adequate to override countervailing First Amendment rights. *Id.* at 167.

record or reality. Even if respondents' unsupported allegations of misdeeds are credited, *arguendo*, they in no way support the unprecedented intrusion into the relationship between churches and their members effectuated by the Clearwater Ordinance.

In order to justify a burden on First Amendment rights, the state must "convincingly show a substantial relationship between the information sought and a subject of overriding and compelling state interest." *Branzburg* v. *Hayes*, 408 U.S. 665, 700 (1972) quoting from *Gibson* v. *Florida Legislative Comm.*, 372 U.S. 539, 546 (1963). The Clearwater ordinance bears no "reasonable relationship to the achievement of the governmental purpose asserted as its justification." *Id.* It hardly warrants explanation that an ordinance which purports to regulate solicitations by churches of their members by means of a complex and detailed licensing scheme could not possibly affect such activities as burglaries, kidnapping, framing of opponents, etc. Thus, to the extent that Clearwater has an interest in combatting these activities, it is not furthered by the instant ordinance and accordingly cannot survive constitutional scrutiny.[8]

---

[8] Clearwater, of course, has at its disposal the usual methods for protecting its citizens against the crimes it lists in its brief, *i.e.*, criminal investigation and prosecution. Not only are the criminal laws a more direct and effective method of combatting such crimes than a compelled registration and disclosure ordinance concerning the voluntary donations of members to churches, but they further the government's interest by means less restrictive of First Amendment rights: Only criminal acts and criminals are affected, unlike the Clearwater ordinance which interjects City officials into every act of church giving by every church member in the City. The fact that the City of Clearwater and the State of Florida have never even criminally charged—let alone convicted—the Church or its members with any of the crimes gratuitously waived before the Court by the City, demonstrates that the City's laundry list of horribles not only is without record support, but untrue.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

ERIC M. LIEBERMAN, Esq.
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
740 Broadway, Fifth Floor
New York, New York 10003-9518
(212) 254-1111

Counsel for Petitioner

April 23, 1986